Supreme Court, U.S.
FILED
JUN 15 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-2024

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DAVID GLEN MEYERS, et al., Petitioners,

v.

CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES, et al., Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LINSEY J. FREEMAN, ESQ.
219 Broadway
Richmond, CA 94804
(415) 235-5651
Counsel of Record

VAUGHN E. SPUNAUGLE, ESQ.
207 - 37th Street
Richmond, CA 94805
(415) 620-0398
Counsel for Petitioners

June 10, 1987

QUESTIONS PRESENTED

1. Whether a social worker performing duties connected with the initiation of child dependency proceedings is entitled to absolute immunity in a suit for compensatory damages under 42 U.S.C. Section 1983?

2. Whether a social worker, who ordered a father to stay away from the family residence prior to the initiation of child dependency proceedings, is entitled to qualified immunity?

3. Whether a United States District Court is required to liberally construe a complaint brought under the Civil Rights Act, as alleging not only procedural but also substantive due process deprivations before dismissing it?

4. Whether Family Conciliation Court counselors, who willfully violated court orders, are entitled to absolute judicial immunity in a suit for compensatory damages under 42 U.S.C. Section 1983?

[Note: Petitioners reserve the right to argue Question 5 in the event certiorari is granted on the above questions, but do not include Question 5 among the reasons for the grant of certiorari.

5. Does a court of appeals abuse its discretion in affirming dismissal of a complaint brought under 42 U.S.C. Section 1983 where it is unclear whether the complaint could have been saved by any amendment?

LIST OF PARTIES

The parties to the proceedings below were the petitioners David Glen Meyers, his children, Paul David Meyers, Matthew Christopher Meyers and Angela Jennifer Meyers, and his parents, George Albert Meyers and Georgia Ann Meyers and the respondents, Harold Haaland, Kay Crossley, Agnes H. Allison and the Contra Costa County Department of Social Services.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....i

LIST OF PARTIES.....ii

OPINIONS BELOW.....2

JURISDICTION.....2

STATUTE INVOLVED.....3

STATEMENT OF THE CASE.....4

REASONS FOR GRANTING THE WRIT.....15

I. The Ninth Circuit's decision to extend absolute immunity to a social worker in the performance of his duties connected with the initiation of child dependency proceedings conflicts in approach with Court precedent and raises important and reoccurring problems.....15

II. The Ninth Circuit's decision that a social worker is entitled to qualified immunity because his act of ordering a father to stay away from the family residence did not violate clearly established statutory or constitutional rights conflicts in principle with Court precedent.....21

III. The District Court's failure to liberally construe the complaint as alleging both substantive and procedural due process deprivations before dismissing it conflicts in approach with decisions of other Circuits and Ninth Circuit panels.....26

IV. The Ninth Circuit's decision to extend absolute immunity to the Family Conciliation Court counselors' conduct of willfully violating a court order and instruction conflicts in approach with Court precedent and the decisions of other Circuits and Ninth Circuit panels.....29

CONCLUSION.....35

APPENDIX (Opinion and Judgment of Court of Appeals, and Memorandum Decision of District Court).....1a

TABLE OF AUTHORITIES

Cases Page

Augustine v. Doe, 740 F.2d 322 (5th Cir. 1984).....28

Birnbaum v. Trussell, 347 F.2d 86 (2d Cir. 1965).....26

Butz v. Economou, 438 U.S. 478 (1978).....29

Cleavinger v. Saxner, __U.S.__, 106 S. Ct. 496 (1985).....29

Czikalla v. Malloy, No. 86-K-777 (D.Colo. Dec. 8, (1986).....20

Daniels v. Williams, 474 U.S._,
106 S. Ct. 662 (1986).....24
Demoran v. Witt, 781 F.2d 155
(9th Cir. 1986).....14, 24
Doe v. County of Suffolk, 494
F. Supp. 179 (E.D.N.Y. 1980).....20
Donovan v. Reinbold, 433 F.2d 738
(9th Cir. 1970).....32
Duchesne v. Sugarman, 566 F.2d 817
(2d Cir. 1977).....20
Harlow v. Fitzgerald, 457 U.S. 800
(1982).....13, 17, 21
Hoffman v. Halden, 268 F.2d 280
(9th Cir. 1959).....32
Hudson v. Palmer, 468 U.S. 517
(1984).....23, 27
Hutchinson v. United States, 677
F.2d 1322 (9th Cir. 1982).....11
In re C., 9 Cal. App. 3d 255 (1970).....18
In re Scott County Master Docket, 618
F. Supp. 1534 (D.Minn. 1985).....20

Kurzawa v. Mueller, 732 F.2d 1456 (6th Cir. 1984).....18

Lockhart v. Hoenstine, 411 F.2d 455 (3d Cir.), cert. denied, 396 U.S. 941 (1969).....32

Malley v. Briggs, 475 U.S.__, 106 S. Ct. 1092 (1986).....16

Marshall v. Sawyer, 301 F.2d 639 (9th Cir. 1962).....26

McClary v. O'Hare, 786 F.2d 83 (2d Cir. 1986).....28

McCray v. State of Maryland, 456 F.2d 1 (4th Cir. 1972).....30, 31, 32

McLallen v. Henderson, 492 F.2d 1298 (8th Cir. 1974).....31

Morrison v. Jones, 607 F.2d 1269 (9th Cir.), cert. denied, 445 U.S. 962 (1979).....26

Murray's Lessee v.Hoboken Land & Improvement Co., 59 U.S. 272 (1856).....24

Nickens v. White, 536 F.2d 802
(8th Cir. 1976).....26
Parratt v. Taylor, 451 U.S. 527
(1981).....10, 27, 28
Pepper v. Alexander, 599 F. Supp. 523
(D.N.M. 1984).....18
Prince v.Massachusetts, 321 U.S. 158
(1944).....22
Richardson v. Koshiba, 693 F.2d 911
(9th Cir. 1982).....31
Rizzo v. Goode, 423 U.S. 362 (1976).....12
Roberts v. Acres, 495 F.2d 57
(7th Cir. 1974).....26
Rochin v. California, 342 U.S. 165
(1952).....24
Rupp v. Bryant, 417 So.2d 658 (1982).....17
Rutherford v. City of Berkeley, 780 F.2d
1444 (9th Cir. 1986).....28
Ryland v. Sharpiro 708 F.2d 967
(5th Cir. 1983).....26

Santosky v. Kramer, 455 U.S. 745 (1982)...22

Sellars v. Procunier, 641 F.2d 1295 (9th Cir.), cert. denied, 454 U.S. 1102 (1981).....31

Skinner v. Oklahoma, 316 U.S. 535 (1942)..27

Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 1977) 22

Stump v. Sparkman, 435 U.S. 349 (1978)....29

Thomas v. Younglove, 545 F.2d 1171 (9th Cir. 1976).....26

Tower v. Glover, 467 U.S. 914 (1984)..16, 19

Whelehan v. County of Monroe, 558 F. Supp. 1093 (W.D.N.Y. 1983).....18

Williams v. Wood, 612 F.2d 982 (5th Cir. 1980).....31

Wilson v. Beebe, 770 F.2d 578 (6th Cir. 1985).....28

Wolf-Lillie v. Sonquist, 699 F.2d 864 (7th Cir. 1983).....28

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DAVID GLEN MEYERS, PAUL DAVID MEYERS, MATTHEW CHRISTOPHER MEYERS, ANGELA JENNIFER MEYERS, GEORGE ALBERT MEYERS, and GEORGIA ANN MEYERS, Petitioners,

v.

HAROLD HAALAND, KAY CROSSLEY, AGNES H. ALLISON and CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

The Petitioners David Glen Meyers, Paul David Meyers, Matthew Christopher Meyers, Angela Jennifer Meyers, George Albert Meyers and Georgia Ann Meyers respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on March 16, 1987.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 812 F.2d 1154, and is reprinted in the appendix hereto, p. 1a, infra.

The memorandum decision of the United States District Court for the Northern District of California (Patel, D.J.) has not been reported. It is reprinted in the appendix hereto, p. 27a, infra.

JURISDICTION

Invoking federal jurisdiction under 42 U.S.C. Section 1983, the petitioners brought this suit in the Northern District of California. On May 6, 1985, the Northern District granted the respondents' motions to dismiss. See p. 29a, infra.

On petitioners' appeals, the Ninth Circuit on March 16, 1987, entered a judgment and an opinion affirming the Northern District's

order in all respects. See p. 6 a, infra. No petition for rehearing was sought.

The jurisidiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. Section 1254 (1).

STATUTE INVOLVED

This case involves 42 U.S.C. Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

Petitioners, David Meyers, his children, Paul, Matthew and Angela, and his parents, George and Georgia Meyers, brought this civil rights action for damages under 42 U.S.C. Section 1983 against David's former wife, Amy, and numerous individual and governmental defendants. The complaint alleged that the defendants conspired, under color of state law and without due process of law, to prevent the adult petitioners from associating with the minor petitioners, thereby depriving them of a liberty interest. Having jurisidiction pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343(3), the District Court dismissed as to all defendants. Petitioners appealed only the dismissals as to the respondents herein: Haaland, a social caseworker specialist employed by the Department of Social Services in its Children's Protective Services

Unit, 1/ Allison an associate counselor, and Crossley, a supervising counselor, both employed by the Family Conciliation Court and the Contra Costa County Department of Social Services (DSS). The Ninth Circuit affirmed the District Court's order in all respects.

1. Haaland

The complaint alleges that on October 8, 1981, Amy and Haaland entered into a conspiracy to deprive David of custody of their children. After Amy made false allegations to Haaland that David had molested one of their children, Paul, Haaland embarked on a course of conduct designed to separate David from his children.

1/ Department of Social Service workers are assigned the duties of probation officers with respect to minors alleged or adjudged to be dependent children as described by California Welfare and Institutions Code Section 300 (West 1984). Cal. Welf. & Inst. Code Section 202.5 (West 1984).

To begin with, Haaland commenced and supervised an investigation which involved Richmond and San Pablo police officers. Then, on October 23, after David had informed Haaland that the San Pablo Police Department had terminated its investigation for lack of evidence and that he was going home to see his children, Haaland ordered David to stay away from his home until a judicial hearing took place on October 26. David obeyed Haaland's order.

On October 26, Haaland filed verified dependency petitions which contained false and unsubstantiated allegations of child abuse. Based solely on the petitions, the Juvenile Court Referee ordered that the children be detained in Amy's custody.

Although the Referee made no rulings as to visitation, Haaland stated at the hearing that he would assume jurisdiction and control over supervised visitation between

David and his children. Haaland permitted only one one-hour visit that day. Despite David's repeated requests, no other visits were allowed. The dependency proceeding was continued until November 17, at which time the petition was dismissed pursuant to Haaland's recommendation. Haaland's role in the matter eventually ended in 1982.

2. Allison and Crossley

The complaint alleges that during the fall of 1977, Amy, David and his parents participated in a series of voluntary counseling sessions conducted by Allison under auspices of the Family Conciliation Court, and that during these sessions Allison became biased against the adult petitioners. Allison's bias grew following a series of meetings with Amy, during which she conspired with Amy to deprive David of custody of his children. These meetings occurred some time

during the latter half of 1981, but before October 8, 1981. Although Amy made false accusations of child abuse to Allison during these meetings, Allison willfully failed to discuss them with David or to otherwise investigate them.

On November 16, David and Amy attended a mandatory conciliation session with a Family Conciliation Court counselor. Although the case was not initially assigned to Allison, upon learning of the parties' indentities, she induced Crossley to reassign the case to her in spite of her bias against the adult petitioners.

Petitioners further claim that from November 19, 1981, through January 29, 1982, Allison, acting in concert with Amy, refused to arrange for visitation in willful violation of a court order requiring her to do so. Additionally, after the court had

awarded temporary custody to foster parents and stressed the importance of their neutrality, Crossley and Allison visited the foster parents on April 7, 1982, and, in willful violation of the court order, attempted to induce them to refuse David and his parents the right to see the children. David eventually was awarded custody in January 1984.

3. DSS

The complaint alleged that Haaland's actions were not only carried out in furtherance of the conspiracy with Amy, but also pursuant to the policies, regulations and customs of DSS. Such policies include crediting all allegations of child abuse regardless of the circumstances. The complaint accordingly alleged that Haaland acted pursuant to official policies in conclusory terms, the details being left to pretrial discovery.

The respondents moved to dismiss the complaint for failure to state a claim upon which relief can be granted (Rule 12(b)(6), Fed.R.Civ.P.), or in the alternative for summary judgment (Rule 56, Fed.R.Civ.P.). The District Court granted respondents' motions to dismiss, holding the petitioners failed to allege that the deprivation of their liberty interest, under color of state law, had occurred without due process as required by Parratt v. Taylor, 451 U.S. 527 (1981). The court applied Parratt because (p. 41a-42 a, infra):

> [A] close reading of the first count of the complaint indicates that it is not the policies themselves that are alleged to give rise to the constitutional deprivations.... Rather, the complaint states that various unauthorized actions were committed by the named defendants in furtherance of an alleged conspiracy to deprive plaintiffs of custody of the children.

The District Court found that the post-

deprivation remedies available to petitioners, namely the October 26 and November 17 dependency proceedings, the custody proceedings and the state contempt procedures, satisfied due process. See p. 42a-46a infra. The court, relying on Hutchinson v. United States, 677 F.2d 1322 (9th Cir. 1982), further held that petitioners' conclusory allegations were insufficient to state claims under 42 U.S.C. Section 1983. See p. 47a, infra.

Assuming arguendo that the complaint was sufficient, the District Court, impressed with the discretion afforded Haaland in the performance of his functions, found that his duties resembled those of a prosecutor. The court thus held that Haaland was entitled to absolute immunity for all of his actions. See p. 54a, infra. The District Court also granted Allison and Crossley absolute immunity because, as officers of the court,

they were entitled to quasi-judicial immunity. See p. 49a-50a, infra.

With respect to DSS, the court, citing Rizzo v. Goode, 423 U.S. 362, 371 (1976), found that the complaint was insufficient, and stated (p. 56a, infra.):

> [P]laintiffs do not allege that Haaland acted pursuant to an official policy that all allegations of sexual abuse be credited regardless of the circumstances. ...Plaintiffs have not shown an "affirmative link" between the occurrence of misconduct and the policy or custom at issue.

The District Court dismissed the claim without leave to amend.

Having jurisdiction under 28 U.S.C. Section 1291, a Ninth Circuit panel, consisting of Judges Schroeder, Canby and Boochever, affirmed the District Court's decision in all respects. Assuming, without discussion, that the complaint was sufficient to state a cause of action under 42 U.S.C. Section 1983 with regard to Haaland, Allison

and Crossley, the court only addressed the absolute immunity issue.

In accord with the District Court, the Ninth Circuit granted Haaland absolute immunity because of his quasi-prosecutorial functions. See p. 12a-13a, infra. The court further determined that policy considerations supported such an extension of absolute immunity. See p. 12a-13a infra.

However, unlike the District Court, Ninth Circuit declared that Haaland's ordering David away from his home on October 23, prior to the initiation of the dependency proceeding, was neither an advocatory nor a judicial action, and thus granted him only qualified immunity. The court then found that Haaland's conduct on October 23 did not violate clearly established statutory or constitutional rights as required by Harlow v. Fitzgerald, 45 U.S. 800 (1982).

See p. 20a, infra.

Agreeing with the District Court, the Ninth Circuit held that Allison and Crossley enjoyed quasi-judicial immunity. The court added that although they allegedly violated court orders, they were still entitled to absolute immunity because such actions were not "clearly and completely outside the scope of [their] jurisdiction" (quoting Demoran v.Witt, 781 F.2d 155, 158 (9th Cir. 1985))(p. 23a-24a, infra).

Judge Boochever dissented in part, finding that petitioners had stated sufficient allegations of deprivation of statutory and constitutional parental rights by Haaland and that resolution of the factual issues involved in a qualified immunity defense was necessary. See 26a, infra.

REASONS FOR GRANTING THE WRIT

I.

The Ninth Circuit's decision to extend absolute immunity to a social worker in the performance of his duties connected with the initiation of child dependency proceedings conflicts in approach with Court precedent and raises important and reoccurring problems.

Without congressional authorization or basis in common law, the Ninth Circuit has made the absolute immunity defense available to a new class of state officials — social workers. By analogizing a social worker's duties to those of a prosecutor and relying on the policy considerations used to justify prosecutorial immunity, the court has given itself the discretion to limit the relief available in Section 1983 litigation. Such an extension of the absolute immunity doctrine deserves this Court's attention.

The Ninth Circuit's grant of absolute immunity to a social worker conflicts in

approach with Malley v. Briggs, 475 U.S. ___, 106 S. Ct. 1092 (1986). In Malley, this Court held that a state police officer whose request for a warrant allegedly caused an unconstitutional arrest was not entitled to the same absolute immunity enjoyed by a prosecutor, but rather only qualified immunity. In doing so, the Court confirmed:

> Our general approach to questions of immunity under Section 1983 is by now well established.
> ...Our initial inquiry is whether an official claiming immunity under Section 1983 can point to a common-law counterpart to the privilege he asserts. If "an official was accorded immunity from tort actions at common law when the Civil Rights Act was enacted in 1871, the Court next considers whether Section 1983's history or purposes nonetheless counsel against recognizing the same immunity in Section 1983 actions." (citations omitted) (quoting Tower v. Glover, 467 U.S. 914, 920 (1984)) [106 S. Ct. at 1095].

Contrary to the above approach, in considering Haaland's conduct of filing dependency petitions containing false and

unsubstantiated allegations of child abuse, the Ninth Circuit did not inquire as to the scope of immunity afforded social workers at common law. Perhaps this was so because there was no such social service position in 1871, and thus no immunity for social workers at common law.2/ Given that social workers had no true common-law counterpart, there is no common law basis for granting them absolute immunity.

The Ninth Circuit impliedly followed the functional approach to the immunity issue, as recognized in Harlow v. Fitzgerald, 457 U.S. 800, 810 (1982), and concluded that "[a]lthough child service workers do not initiate criminal proceedings, their responsibility for bringing dependency proceedings, ... is not very different from the responsibility of a criminal prosecutor"

2/The first social service agencies were created in the United States in the 1930's. Rupp v. Bryant, 417 So.2d 658, 662 (1982).

(p. 12a, infra). Although other courts have reached this same conclusion, 3/ the Ninth Circuit's reasoning is at odds with In re C., 9 Cal. App. 3d 255 (1970). There, the California Court of Appeals analyzed the probation officer's role in initiating a dependency proceeding and stated:

> The probation officer does not act as a district attorney since a proceeding in the juvenile court is not deemed a criminal proceeding nor a proceeding designed to punish the minor, but one to supplant parental supervision.
> ... [I]t is clear to us that the role of the probation officer in juvenile court proceedings is not one in the context of an adversary-advocate, but a role in which he acts as the arm of the court in the best interests of the minor. (citations omitted) [9 Cal. App. 3d at 265].

3/ The Sixth Circuit also granted the social workers absolute immunity in Kurzawa v. Mueller, 732 F.2d 1456, 1458 (6th Cir. 1984). However, it is not clear whether the court did so based on quasi-judicial or quasi-prosecutorial immunity. See also, Whelehan v. County of Monroe, 558 F. Supp. 1093, 1098-99 (W.D.N.Y. 1983); Pepper v.Alexander, 599 F. Supp. 523, 526-27 (D.N.M. 1984).

According to the court of appeals then, a social worker's role is not advocatory, and thus is not functionally comparable to that of a prosecutor.

Additionally, the Ninth Circuit determined that such an extension of absolute immunity is justified by policy considerations. According to the court, social workers must be allowed to exercise their discretion in initiating dependency proceedings without fear of personal liability. However, the Ninth Circuit's reasoning conflicts in approach with Tower v. Glover, 467 U.S. 914 (1984). In Tower, this Court refused to extend absolute immunity to state public defenders who allegedly conspired to deprive their clients of federal constitutional rights, and in so doing explained:

> We do not have a license to establish immunities from Section 1983 actions in the interest of what we judge to be sound

> public policy. It is for Congress to determine whether Section 1983 litigation has become too burdensome to state and federal institutions and, if so, what remedial action is appropriate. [467 U.S. at 922-23].

Given that Congress has not extended absolute immunity to social workers, the Ninth Circuit's assertion of the authority to do so clearly conflicts with Court precedent. Moreover, other courts have found the qualified immunity defense sufficient for social workers.[4/]

4/ Duchesne v. Sugarman, 566 F.2d 817, 833 (2d Cir. 1977); Doe v. County of Suffolk, 494 F.Supp. 179, 183 (E.D.N.Y. 1980); In re Scott County Master Docket, 618 F. Supp. 1534, 1565-67 (D.Minn.1985); Czikalla v. Malloy, No. 86-K-777, slip op. at 6 (D. Colo. Dec. 8, 1986).

II.

The Ninth Circuit's decision that a social worker is entitled to qualified immunity because his act of ordering a father to stay away from the family residence did not violate clearly established statutory or constitutional rights conflicts in principle with Court precedent.

The Ninth Circuit found that Haaland was entitled to only qualified immunity for his actions occurring before the initiation of the dependency proceedings. In applying Harlow, 457 U.S. at 818, the court decided that Haaland's act of ordering David to stay away from the family residence did not violate clearly established statutory or constitutional rights because he did not physically interfere with custody and because social workers have broad general authority to protect children. Not only is such reasoning inconsistent with California

law, 5/ it leads to a conclusion which conflicts with Court precedent.

This Court has often acknowledged the existence of a protected liberty interest under the Fourteenth Amendment in keeping one's family unit together. Santosky v. Kramer, 455 U.S. 745 (1982). The Court in Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977), added:

> There does exist a 'private realm of family life which the state cannot enter', that has been afforded both substantive and procedural protection. (citations omitted) (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944)) (emphasis added) [431 U.S. at 842].

5/ The court cites California Welfare and Institutions Code Section 16501 (West 1980) as support for the proposition that social workers have broad general authority in protecting children. However, nowhere does the Code authorize a social worker to use his official position to exert control over a parent.

In concluding that Haaland's conduct did not violate clearly established constitutional rights, the Ninth Circuit failed to consider petitioners' independent substantive due process right to remain together as a family without the coercive interference of the state. The doctrine of substantive due process protects individuals against "actions which governmental officials may not take no matter what procedural protections accompany them." Hudson v.Palmer, 468 U.S. 517, 541 n. 4 (1984) (Separate opinion of Justice Stevens). Such actions are justified only by compelling state interests. Since Haaland's interference was not justified by a compelling state interest, it was unconstitutional.

The Ninth Circuit reasoned that petitioners' rights were not violated because Haaland did not physically interfere with custody. Although his conduct may not be

comparable to that which shocked the Court's conscience in Rochin v. California, 342 U.S. 165 (1952), it does go to the heart of the due process clause. As stated in Daniels v. Williams, 474 U.S.__, 106 S. Ct. 662, 665 (1986), the due process clause was intended to "prevent governmental power from being 'used for purposes of oppression'" (quoting Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. 272, 277 (1856)).

Here, Haaland's act of ordering David to stay away from the family residence constituted an abuse of authority. Even though David did not legally have to obey Haaland's order, he did so because of Haaland's power to temporarily disrupt and sever his relationship with his children. The due process clause was meant to protect parents against such misuse of power.

The Ninth Circuit's decision permits a

social worker to abuse his official position to exert control over a parent. If left to stand, the sanctity of the family which the Court has so frequently and fervently emphasized will be jeopardized.

III.

The District Court's failure to liberally construe the complaint as alleging both substantive and procedural due process deprivations before dismissing it conflicts in approach with decisions of other Circuits and Ninth Circuit panels.

Other Circuits clearly agree that complaints brought under the Civil Rights Act are to be liberally construed. 6/ Ninth Circuit cases too have so held.7/

Moreover, Morrison v. Jones, 607 F.2d 1269, 1276 (9th Cir.), cert. denied, 445 U.S. 962 (1979), is precisely on point. In Morrison, a Ninth Circuit panel reversed the district court's dismissal of plaintiff's complaint because the lower court had failed to liberally construe it. In so doing the

---

6/See, e.g., Ryland v. Shapiro, 708 F.2d 967, 971 (5th Cir. 1983); Nickens v. White, 536 F.2d 802, 803 (8th Cir. 1976); Roberts v. Acres, 495 F.2d 57, 59 (7th Cir. 1974); Birnbaum v. Trussell, 347 F.2d 86, 90 (2d Cir. 1965).

7/ Thomas v. Younglove, 545 F.2d 1171, 1172 (9th Cir. 1976); Marshall v. Sawyer, 301 F.2d 639, 647 (9th Cir. 1962).

court stated:

> At this preliminary stage of the proceedings, we cannot say that plaintiff has failed to state a claim for relief based upon her constitutionally secured rights to procedural due process of law and her substantive familial rights that have long been considered the 'basic civil rights of man.' (quoting Skinner v. Oklahoma, 316 U.S. 535, 541 (1942))(emphasis added) [607 F.2d at 1276].

In conflict with the above approach, the District Court in the instant case, read the complaint as alleging only procedural due process deprivations. The court, relying on Parratt v. Taylor, 451 U.S. 527 (1981), then dismissed the complaint, finding that adequate post-deprivation remedies were available.

However, had the District Court liberally construed the complaint as alleging not only procedural but also substantive due process violations, Parratt would not have been dispositive. In Hudson, 468 U.S. 517 (1984), Justice Stevens, joined by three other

justices, agreed that Parratt required dismissal of the Section 1983 action, but added in footnote 4, "I do not understand the Court's holding to apply to conduct that violates a substantive constitutional right ...." 468 U.S. at 451. Other Circuits have followed Justice Steven's view and held that Parratt does not apply to substantive due process deprivations. 8/ Recently, a Ninth Circuit panel reached the same conclusion in Rutherford v. City of Berkeley, 780 F.2d 1444, 1447 (9th Cir. 1986). Thus, because the District Court failed to liberally construe the complaint, petitioners were denied a chance to prove their case.

8/See, e.g., McClary v. O'Hare 786 F.2d 83, 86, n.3 (2d Cir. 1986); Wilson v. Beebe, 770 F.2d 578, 585 (6th Cir. 1985); Augustine v. Doe, 740 F.2d 322, 326 (5th Cir. 1984); Wolf-Lillie v. Sonquist, 699 F.2d 864, 872 (7th Cir. 1983).

IV

The Ninth Circuit's decision to extend absolute immunity to the Family Conciliation Court counselors' conduct of willfully violating a court order and instruction conflicts in approach with Court precedent and the decisions of other Circuits and Ninth Circuit panels.

In Stump v. Sparkman, 435 U.S. 349 (1978), this Court firmly established that judges and those performing judge-like functions are absolutely immune from 42 U.S.C 1983 liability for acts performed in their official capacities. 9/ As pointed out by Justice Blackmun in Cleavinger v. Saxner, __ U.S._, 106 S. Ct. 496, 501 (1985), this Court has followed a "functional" approach to immunity law. As explained in Butz v. Economu, 438 U.S. 478, 511 (1978), those entitled to absolute immunity have it "because of the special nature of their

---

9/ Applied to nonjudicial officials then, absolute judicial immunity is termed quasi-judicial immunity.

responsibilities" rather than "because of their particular location within the Government." Thus, when a court official acts in a capacity in which he is not called upon to exercise judicial or quasi-judicial discretion, he is not entitled to quasi-judicial immunity, "regardless of any apparent relationship of his role to the judicial system." McCray v. State of Maryland, 456 F.2d 1, 3-4 (4th Cir. 1972).

In accord with Court precedent, the Circuits have applied the "functional comparability" test to various court officials and have decided that the degree of immunity depends on the action taken and the judicial or quasi-judicial discretion involved therein. The Circuits have thus held that court clerks, for example, are entitled to absolute immunity for the performance of discretionary functions, and only qualified immunity for actions taken

pursuant to their lawful duties.[10] Other Ninth Circuit panels have applied the "functional comparability" test to court officials in the same manner.[11]

Additionally, the Circuits have allowed court officials to assert a closely related defense, referred to as derivative immunity. This defense affords absolute immunity to all public officials who act in obedience to a

---

10/ See, e.g., McCray v. State of Maryland, 456 F.2d at 3-4 (qualified immunity for filing papers negligently); McLallen v. Henderson, 492 F.2d 1298, 1299-1300 (8th Cir. 1974)(dictum)(qualified immunity for ministerial duties); Williams v. Wood, 612 F.2d 982, 984-85 (5th Cir. 1980) (qualified immunity for failing to notify parties of entry of final judgment).

11/ See, e.g., Demoran v. Witt, 781 F.2d 155, 158 (9th Cir. 1986) (probation officers providing pre-sentencing reports enjoy quasi-judicial immunity); Richardson v. Koshiba, 693 F.2d 911, 914-15 (9th Cir. 1982)(Judicial Selection Committee, although an arm of the court, granted only qualified immunity); Sellars v. Procunier, 641 F.2d 1295, 1303 (9th Cir.), cert. denied, 454 U.S. 1102 (1981)(parole board officials perform judge-like roles and thus enjoy quasi-judicial immunity).

judicial order or under the court's direction. Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir.), cert. denied, 396 U.S. 941 (1969).

In considering the application of the above defenses to court officials, the Circuits have held that no immunity of any type is available where the official disobeys a court order or exceeds his lawful authority. See, e.g., McCray v. State of Maryland, F.2d at 5 (no immunity for clerk acting in direct violation of his statutory duties). Other Ninth Circuit panels, too, have reached this same conclusion. In Hoffman v. Halden, 268 F.2d 280, 300 (9th Cir. 1959), a Ninth Circuit panel observed that "[o]bvioulsy no immunity should be granted to the officials who wilfully disobeyed an order of the court." See also, Donovan v. Reinbold, 433 F.2d 738, 744 (9th Cir. 1970) (no immunity for city attorneys

who advised city to disobey an administrative order).

Contrary to the "functional" approach employed by the Court, other Circuits and Ninth Circuit panels, the court in the instant case held that Allison and Crossley were entitled to quasi-judicial immunity, despite their violation of a court order and instruction, simply because they were court officers. The court's failure to analyze the judicial or quasi-judicial discretion entailed in the counselors' statutory duties and, in particular, their duty to obey court orders and instructions, demonstrates a misunderstanding about the application of and policy behind quasi-judicial immunity. According to the Ninth Circuit's reasoning in this case, all court attachés enjoy absolute immunity, regardless of the discretion involved in the function performed or the

action taken. Such a result undermines the reasons for the creation of the absolute immunity shield and establishes a confusing precedent, likely to generate even further confusion among the lower courts. It is an approach to immunity law which conflicts with Court precedent and the decisions of other Circuits and Ninth Circuit panels. Plenary consideration of the matter by this Court is essential.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. Petitioners reiterate that Question 5 is presented herein, not as a reason for granting certiorari, but because this is the only opportunity for petitioners to seek review of the Ninth Circuit's ruling that petitioners' Section 1983 complaint should be dismissed for failure to state a claim upon which relief can be given.

Respectfully submitted,

Linsey J. Freeman
219 Broadway
Richmond, Ca 94804
(415) 235-5651
Counsel of Record

Vaughn E. Spunaugle
207 - 37th Street
Richmond, CA 94805
(415) 620-0398
Counsel for Petitioners

June 10, 1987